

**IN THE UNITED STATES DISTRICT  
FOR THE NORTHERN DISTRICT OF  
INDIANA SOUTH BEND DIVISION**

INDIANA GRQ, LLC,	)	
	)	
Plaintiff,	)	Cause No. 3:21-cv-00227-DRL-MGG
	)	
v.	)	
	)	
AMERICAN GUARANTEE AND	)	
LIABILITY INSURANCE COMPANY, et al.,	)	
	)	
Defendants.	)	
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**PLAINTIFF INDIANA GRQ, LLC’S STATEMENT OF  
UNCONTESTED FACTS IN SUPPORT OF INDIANA GRQ, LLC’S  
MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING  
THE \$30 MILLION FLOOD SUBLIMIT**

**I. The Insurance Claim**

1. Indiana GRQ, LLC (“IRG”) owns a manufacturing facility at 701 Chippewa Avenue in South Bend, Indiana (the “South Bend Property”). *See* Declaration of William O’Neil (“O’Neil Dec.”), Ex. A (“McLarens Report”) at Zur\_C01714.

2. On August 15, 2016, heavy rains flooded the Plant. Tenant space on the first floor was covered by several feet of water. In addition, water inundated the Plant’s underground electrical vaults, destroying electrical switchgear, transformers and main switches and related electrical equipment and components in 6 electrical distribution substations. The flooded transformers released PCB containing oils into the floodwater. *Id.* at Zur\_C01716.

3. IRG and IRG Realty Advisors, LLC timely reported the claim to its lead property insurer Zurich, who in turn notified the other participants in IRG's property insurance program described in more detail below. *Id.* at Zur\_C01714.

4. Defendant Insurers retained McLarens as the independent adjuster. *Id.* at Zur\_C01715.

## **II. The Insurance Policies**

5. During the relevant period, from April 15, 2016, to April 15, 2017, IRG was insured under a tower of property insurance with total limits of \$500 million. O'Neil Dec. Ex. B (the "Policy") at IRGSB 000016.

6. Defendant Insurers sold IRG the first \$30 million layer of coverage that is relevant to the claim. This first layer of coverage consisted of \$30 million in coverage shared among the seven Defendant Insurers. McLarens Report at Zur\_C01718.

7. Defendant Insurers are American Guarantee and Liability Insurance Company ("Zurich"), Interstate Fire & Casualty Company ("Interstate"), Starr Surplus Lines Insurance Company ("Starr"), Chubb Custom Insurance Company ("Chubb"), General Security Indemnity Company of Arizona ("General Security"), Axis Surplus Insurance Company ("Axis"), and Ironshore Specialty Insurance Company ("Ironshore").

8. Defendant American Guarantee ("Zurich") issued the lead policy form and endorsements and accepted 66.67% of the risk, or \$20 million in limits. McLarens Report at Zur\_C01718.

9. Defendant Interstate Fire & Casualty Company ("Interstate") agreed to follow form to the lead policy issued by American Guarantee and accepted 10% of the risk, or limits of \$3 million. *Id.* at Zur\_C01718-9.

10. Defendant Starr Surplus Lines Insurance Company agreed to follow form to the lead policy issued by American Guarantee and accepted 3.33% of the risk, or limits of \$1 million. *Id.*

11. Defendant Chubb Custom Insurance Company agreed to follow form to the lead policy issued by American Guarantee and accepted 3.33% of the risk, or limits of \$1 million. *Id.*

12. Defendant General Security Indemnity Company of Arizona agreed to follow form to the lead policy issued by American Guarantee and accepted 3.33% of the risk, or limits of \$1 million. *Id.*

13. Defendant Axis Surplus Insurance Company agreed to follow form to the lead policy issued by American Guarantee and accepted 6.66% of the risk, or limits of \$2 million. *Id.*

14. Defendant Ironshore Specialty Insurance Company agreed to follow form to the lead policy issued by American Guarantee and accepted 6.66% of the risk, or limits of \$2 million. *Id.*

15. The Insuring Agreement agreed to by all Defendant Insurers states

This Policy insures against direct physical loss of or damage caused by a Covered Cause of Loss to Covered Property at an Insured Location described in section II-2.01, all subject to the terms conditions and exclusions stated in this Policy.

Policy at IRGSB 000017.

16. A Covered Cause of Loss is defined as “All risks of direct physical loss of or damage from any cause unless excluded.” *Id.* at IRGSB 000063.

17. The Policy contains specific wording for four “Described Causes of Loss,” one of which is Flood. *Id.* at IRGSB 000048-49.

18. The Policy's Limits of Liability section provides a limit for the Described Cause of Loss of Flood as:

Limit	Description
\$30,000,000	<p><b>FLOOD</b> in the <b>Annual Aggregate</b> but not to exceed the following limits in the <b>Annual Aggregate</b>:</p> <p>a). \$10,000,000 as respects Locations with any part of the legal description within a <b>Special Flood Hazard Area (SFHA)</b> and not otherwise listed herein.</p>

*Id.* at IRGSB 000020.

19. The Policy defines Flood as:

[a] general and temporary condition of partial or complete inundation of normally dry land areas or structure(s) caused by: The unusual and rapid accumulation or runoff of surface waters, waves, tides, tidal waves, tsunami, the release of water, the rising, overflowing or breaking of boundaries of nature or man-made bodies of water; or the spray there from all whether driven by wind or not; or Mudflow or mudslides caused by accumulation of water on or under the ground. Flood also includes the backup of water from a sewer, drain or sump caused in whole or part by Flood. Flood also includes Storm Surge if shown on the declarations as part of Flood."

*Id.* at IRGSB 000065.

20. Annual Aggregate is defined as "The maximum amount of loss or damage payable in any one (1) Policy Year regardless of the number of Occurrences within the same policy year." *Id.* at IRGSB 000062.

21. Special Flood Hazard Area is defined as:

an area defined by FEMA (The Federal Emergency Management Agency) or any foreign equivalent that will be inundated by the flood event having a 1-percent change of being equaled or exceeding in any given year. The 1-percent annual change flood is also referred to by FEMA as the base flood or 100-year flood. SFHA's per FEMA include but are not limited to Zone A, Zone AO, Zone AH,

Zones A1-30, Zone AE, ZoneA99, Zone AR, Zone AR/AE, Zone AR/AO, Zone AR/A1-A30, Zone ARIA, Zone V, Zone VE, and Zones VI-V30. If not defined by FEMA or any foreign equivalent, it is an area that will be inundated by the flood event having a 1-percent chance of being equaled or exceeded in any given year.

*Id.* at IRGSB 000067-68.

22. The South Bend Property is listed in the Policy's "Schedule of Locations/Statement of Values." Policy at IRGQ036861.

23. The Schedule of Locations/Statement of Values is referenced in and incorporated by reference into the Policy. Policy at IRGSB 000018, IRGSB 000019, IRGSB 000022, and IRGSB 000023; O'Neil Dec. at Ex. C (Keating Deposition at 22-29); O'Neil Dec. at Ex. D (Hargan Deposition at 74-79).

24. McLarens acknowledged that the Plant "is listed in the 4/15/2016 to 4/15/2017 Schedule of Insured Locations as location number 7.10." McLarens Report at Zur\_C01719.

Respectfully submitted,

/s/ Mark E. Miller

Mark E. Miller

Brian G. Friel

William T. O'Neil

Benjamin W. Massarsky

MILLER FRIEL, PLLC

2445 M Street NW

Suite 910

Washington, DC 20037

Tel: (202) 760-3160

[millerm@millerfriel.com](mailto:millerm@millerfriel.com)

[frielb@millerfriel.com](mailto:frielb@millerfriel.com)

[oneilw@millerfriel.com](mailto:oneilw@millerfriel.com)

[massarskyb@millerfriel.com](mailto:massarskyb@millerfriel.com)

and

Clint A. Zalas

LEE, GROVES AND ZALAS  
54931 30<sup>th</sup> Street  
South Bend, Indiana 46635  
Tel: (574) 232-5923  
[cazalas@lgzlegal.com](mailto:cazalas@lgzlegal.com)

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served electronically on the parties listed below this 8th day of July 2022, via the Court's electronic filing system.

Peter E. Kanaris  
David E. Heiss  
Brett Thomaston  
Jennifer J. Kalas  
Hinshaw & Culbertson, LLP  
151 N. Franklin Street, Suite 2500  
Chicago, IL 60606  
[dheiss@hinshawlaw.com](mailto:dheiss@hinshawlaw.com)  
[pkanaris@hinshawlaw.com](mailto:pkanaris@hinshawlaw.com)  
[jkalas@hinshawlaw.com](mailto:jkalas@hinshawlaw.com)

Mitchell A. Orpett  
David E. Schroeder  
Tribler Orpett & Meyer, P.C.  
225 W. Washington St., Suite 2550  
Chicago, IL 60606  
[maorpett@tribler.com](mailto:maorpett@tribler.com)

*Attorneys for Defendants*

/s/ Benjamin W. Massarsky  
Benjamin W. Massarsky